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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG126

Identification of Nations Engaged in Illegal, Unreported, or Unregulated Fishing, Bycatch, or Shark Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for information.

SUMMARY: NMFS is seeking information regarding nations whose vessels are engaged in illegal, unreported, or unregulated (IUU) fishing, bycatch of protected living marine resources (PLMR), and/or fishing activities in waters beyond any national jurisdiction that target or incidentally catch sharks. Such information will be reviewed for the purposes of the identification of nations pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act) and ongoing implementation of the Marine Mammal Protection Act Import Provisions.

DATES: Information should be received on or before December 31, 2018. A public webinar will take place from 3 to 4 p.m. eastern daylight saving time on June 26, 2018.

ADDRESSES: Information may be submitted to either by mail to: NMFS Office of International Affairs and Seafood Inspection,

Attn.: MSRA Information, F/IS 1315 East-West Highway, Silver Spring, MD 20910, or electronically to: *IUU.PLMR.Sharks@noaa.gov*. Information on how to participate in the June 26, 2018, public webinar will be posted online at *https://www.fisheries.noaa.gov*. **FOR FURTHER INFORMATION CONTACT:** Oriana Villar, phone 301-427-8384, or email *Oriana.Villar@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Shark Conservation Act of 2010 (Pub.L. 111-348) amended the Moratorium Protection Act by requiring that actions be taken by the United States to strengthen shark conservation. In November 2015, the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (IUUFEA) (Pub.L. 114-81) further amended the Moratorium Protection Act by, among other things, expanding the scope of information that can be used for the identification of nations to three years for the IUU fishing and bycatch provisions. In December 2016 the Ensuring Access to Pacific Fisheries Act (EAPFA) (Pub.L. 114-327) amended the Moratorium Protection Act by also expanding the scope of information that can be used for the identification of nations to three years for the shark provisions.

Specifically, the Moratorium Protection Act requires the Secretary of Commerce (Secretary) to identify in a biennial report to Congress those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding

three years, in IUU fishing. The definition of IUU fishing can be found at 50 CFR 300.201 and includes:

(1) Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, bycatch reduction requirements, shark conservation measures, and data reporting;

(2) In the case of non-parties to an international fishery management agreement to which the United States is a party, fishing activities that would undermine the conservation of the resources managed under that agreement;

(3) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks;

(4) Fishing activity that has an adverse impact on vulnerable marine ecosystems such as seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems located beyond any national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement; and

(5) Fishing activities by foreign flagged vessels in U.S. waters without authorization of the United States.

In addition, the Secretary must identify in the biennial report those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding three years in fishing activities in waters beyond any national jurisdiction that result in bycatch of a PLMR, or beyond the U.S. exclusive economic zone (EEZ) that result in bycatch of a PLMR shared by the United States, and that have not implemented measures to address that bycatch that are comparable in effectiveness to U.S. regulatory requirements. In this context, PLMRs are defined as non-target fish, sea turtles, sharks, or marine mammals that are protected under U.S. law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna. PLMRs do not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement. A list of species considered as PLMRs for this purpose is available online at:

<https://www.fisheries.noaa.gov/national/international-affairs/identification-iuu-fishing-activities>.

Furthermore, the Shark Conservation Act and the EAPFA requires that the Secretary identify nations in a biennial report to Congress whose fishing vessels are engaged, or have been engaged during the preceding three years prior to the biennial report in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.

More information regarding the identification process and how the information received will be used in that process can be found in the regulations codified at 50 CFR 300.200. Note that the timeframe for activities to be considered for IUU fishing, bycatch, and shark identifications has not been changed to reflect the amendments in the IUUFEA and EAPFA to three years each.

The fifth biennial report to Congress was submitted in January 2017 and is available online at:

<https://www.fisheries.noaa.gov/national/international-affairs/identification-iuu-fishing-activities>. The report identified three nations for IUU fishing.

In fulfillment of its requirements under the Moratorium Protection Act, NMFS is preparing the sixth biennial report to Congress, which will identify nations whose fishing vessels are engaged in IUU fishing or fishing practices that result in bycatch of PLMRs, and/or shark catch in waters beyond any national jurisdiction without a regulatory program comparable to the United States. NMFS is soliciting information from the public that could assist in its identification of nations engaged in activities that meet the criteria described above for IUU fishing, PLMR bycatch, or shark catch in waters beyond any national jurisdiction. Some types of information that may prove useful to NMFS include:

- Documentation (photographs, etc.) of IUU activity or fishing vessels engaged in PLMR bycatch or catch of sharks on the high seas;
- Documentation (photographs, etc.) of fishing vessels engaged in shared PLMR bycatch in any waters beyond the U.S. EEZ;
- Fishing vessel records;
- Trade data supporting evidence that a nation's vessels are engaged in shark catch on the high seas;
- Reports from off-loading facilities, port-side government officials, enforcement agents, military personnel, port inspectors, transshipment vessel workers and fish importers;

- Sightings of vessels included on RFMO IUU vessel lists;
 - RFMO catch documents and statistical document programs;
 - Nation's domestic regulations for bycatch and shark conservation and management;
- Action or inaction at the national level, resulting in non-compliance with RFMO conservation and management measures, such as exceeding quotas or catch limits, or failing to report or misreporting data of the nation's fishing activities; and
- Reports from governments, international organizations, or nongovernmental organizations.

NMFS will consider all available information, as appropriate, when making a determination whether or not to identify a particular nation in the biennial report to Congress. As stated previously, NMFS is limited in the data it may use as the basis of a nation's identification. This information includes IUU fishing activity, bycatch of PLMRs, and shark fishing activity in waters beyond any national jurisdiction in 2016, 2017 and 2018. Information should be as specific as possible as this will assist NMFS in its review. NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including:

- Corroboration of information;

- Whether multiple sources have been able to provide information in support of an identification;
- The methodology used to collect the information;
- Specificity of the information provided;
- Susceptibility of the information to falsification and alteration; and
- Credibility of the individuals or organization providing the information.

With regard to marine mammals, NMFS is also seeking information on foreign commercial fishing operations that export fish and fish products to the United States and the level of incidental and intentional mortality and serious injury of marine mammals in those fisheries. NMFS will use this information to identify harvesting nations with commercial fishing operations that export fish and fish products to the United States and classify those fisheries based on their frequency of marine mammal interactions as either "exempt" or "export" fisheries as part of its development of the List of Foreign Fisheries (LOFF). The classification of a fishery on the final LOFF determines which regulatory requirements will be applicable to that fishery for it to receive a comparability finding necessary to export fish and fish products to the United States from that fishery. The final LOFF can be found at

<https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries>

In March 2018, NMFS published its final 2017 LOFF (83 FR 11703, March 16, 2018), as required by the regulations implementing the Fish and Fish Product Import Provisions of the Marine Mammal Protection Act. The final LOFF reflects information received in its response to information requests to nations and the public (82 FR 2961, January 10, 2017) and during the comment period on interactions between commercial fisheries exporting fish and fish products to the United States and marine mammals, and updates and revisions to the draft LOFF (82 FR 39762, August 22, 2017).

NMFS will revise the LOFF in 2020. In anticipation of this revision, NMFS is soliciting information from harvesting nations; other foreign, regional, and local governments; regional fishery management organizations; nongovernmental organizations; industry organizations; academic institutions; and citizens and citizen groups to identify commercial fishing operations with intentional or incidental mortality and serious injury of marine mammals. For each item we are requesting you identify the exporting nation as the harvesting nation, the processing or intermediary nation, or both. For fisheries exporting fish and fish products to the United States NMFS is requesting the following information:

- Number of participants;

- Number of vessels;
- Gear type;
- Target species;
- Area of operation;
- Fishing season; and
- Information regarding the frequency of marine mammal incidental and intentional mortality and serious injury.

Such information may include fishing vessel records; reports of on-board fishery observers; information from off-loading facilities, port-side government officials, enforcement agents, transshipment vessel workers and fish importers; government vessel registries; RFMO or intergovernmental agreement documents, reports, and statistical document programs; appropriate catch certification programs; and published literature and reports on commercial fishing operations with intentional or incidental mortality and serious injury of marine mammals.

NMFS will consider all available information, as appropriate. Information should be as specific as possible as this will assist NMFS in its review. NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including:

- Corroboration of information;

- Whether multiple sources have been able to provide information in support of an identification;
- The methodology used to collect the information;
- Specificity of the information provided;
- Susceptibility of the information to falsification and alteration; and
- Credibility of the individuals or organization providing the information.

Dated: May 16, 2018.

John Henderschedt,

Director,

Office of International Affairs and Seafood Inspection,

National Marine Fisheries Service.

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